

**REMARKS**

After the foregoing Amendment, Claims 1-13 are currently pending in this application. Claims 1, 2, 8 and 9 have been amended.

Claims 1-5 and 8-11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Application No. 2002/0105913 to Miya, (hereinafter referred to as "Miya"), in view of U.S. Application No. 2002/0173277 to Takoa et al, (hereinafter referred to as "Takoa"). Claims 6-7 and 12-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Miya and Takao as applied to claims 5 or 8, and further in view of U.S. Application No. 2002/00496062 to Petersen (hereinafter referred to as "Petersen").

The prior obviousness rejections based on Miya in view of Ishiguro et al. has been withdrawn.

Applicants agree with the Examiner's continued assertion that Miya discloses a system that allocates between Time Division Duplex (TDD) and Frequency Division Duplex (FDD) in wireless communications, but Miya does not disclose making such allocations based on uplink (UL) and down link (DL) symmetry.

The Examiner now asserts that the teachings of Takoa can now be combined with Miya to render the claimed invention obvious. These rejections are respectfully traversed.

Takao, teaches selecting between three different FDD modes, a pure FDD mode where FDD is used on both UL and DL and two hybrid FDD/TDD mixed modes where FDD is used on either UL or DL as clearly illustrated in Figures 12A and 13A of Takao. These FDD modes are selected based on the amount of data, "data volume," not on a differential of UL and DL data rates.

In Takao, when the FDD selection is made to switch to an FDD hybrid mode based on anticipated data volume, the data rate effectively changes in the direction the higher volume of data is to flow since either the UL or DL channel is appropriated to provide data flow in the opposite direction. There is no change in data rate on the UL or DL channels per se. Moreover, in all cases in Takao, FDD communication is continued on at least one of the UL and DL channels.

If one of ordinary skill in the art were to apply the teaching of Takao to Miya, one would merely provide the additional FDD hybrid mode capacity to Miya to enhance the options available when a communication would otherwise qualify for being conducted via FDD instead of TDD. There is no teaching in Takao to switch to a TDD mode for bi-directional communication.

Claims 1 and 8 have been amended to clarify that the claimed selection based on symmetry is between TDD and FDD "both the UL and DL." There is no suggestion in Takao to switch out of some type of FDD mode. Accordingly, Takao

does not suggest modifying Miya to use communication symmetry for selecting between TDD and FDD as claimed.

Claims 2 and 9 have been amended to more clearly recite the selection between TDD and FDD for both UL and DL based on a differential of data rates, which is not the same as data volume. The communication rate can be the same for both UL and DL, even where there is a much larger volume of data communicated. For example in an overly one sided telephone call, one speaker may talk 90% of the time while the other speaker talks 5% of the time; this does not mean that a bi-directional communication has different rates in each direction.

Miya admittedly does not disclose or suggest making a TDD or FDD selection based on symmetry of data rates. Takao makes an FDD mode selection based on volume, but not differential UL and DL channel rates.

Claims 3-7 and 10-13 are dependent upon claims 1 and 8 respectively, which the Applicants submit are allowable over the new combination of references for the same reasons provided above with respect to claims 1 and 8.

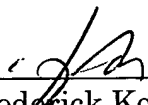
If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

**Applicants:** Desgagne et al.  
**Application No.:** 10/828,665

In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application, including claims 1-13, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

Desgagne et al.

By \_\_\_\_\_  
C. Frederick Koenig III  
Registration No. 29,662

Volpe and Koenig, P.C.  
United Plaza, Suite 1600  
30 South 17th Street  
Philadelphia, PA 19103  
Telephone: (215) 568-6400  
Facsimile: (215) 568-6499

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